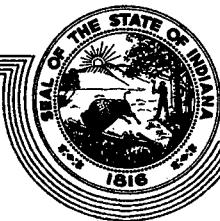


STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, SUITE E-306
INDIANAPOLIS, INDIANA 46204-2764

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PETITION OF WHITING CLEAN ENERGY
INC., ENERGYUSA-TPC CORP., and
NORTHERN INDIANA PUBLIC SERVICE
COMPANY FOR AUTHORIZATION FOR
WHITING CLEAN ENERGY TO SELL
ELECTRIC POWER TO ENERGYUSA-TPC
CORP. AND NORTHERN INDIANA PUBLIC
SERVICE COMPANY TO PURCHASE THAT
ELECTRIC POWER FROM ENERGYUSA-TPC
CORP.

CAUSE NO. 42824 **FILED**

NOV 17 2005

INDIANA UTILITY
REGULATORY COMMISSION

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") has caused the following entry to be made:

On October 7, 2005, Invenergy Nelson, LLC ("Invenergy Nelson") filed a *Petition to Intervene* ("Petition to Intervene") in the above captioned Cause. On October 14, 2005, the Petitioners, Whiting Clean Energy, Inc. ("Clean Energy"), Energy USA-TPC Corp., and Northern Indiana Public Service Company ("NIPSCO") filed a *Response to the Petition to Intervene* ("Response"). On October 27, 2005, Invenergy Nelson filed a *Reply* ("Reply") to the Response filed by the Petitioners. On October 31, 2005, the Petitioners filed a *Motion for Leave to File a Response to the Reply filed by Invenergy Nelson*, along with a *Response to the Reply*. On November 14, 2005, Intervenor LaPorte County filed an *Objection to Petitioners' Motion to file a Surreply to Invenergy Nelson, LLC's Reply in Support of its Petition to Intervene* ("Objection").¹

170 IAC 1-1.1-11 governs intervention in Commission proceedings and states that:

- (a) A petition to intervene may be filed by any person or entity alleging a substantial interest in the subject matter of the proceeding in which the person or entity requests leave to intervene.
- (b) Petitions to intervene shall set out clearly and concisely facts showing the following:

¹ The Presiding Officers, having reviewed Petitioners' *Motion for Leave to File a Response to the Reply filed by Invenergy Nelson* and the *Response to the Reply*, as well as the Objection filed by Intervenor LaPorte County, hereby find that the Petitioners' *Motion for Leave to File a Response to the Reply filed by Invenergy Nelson* should be Granted. Therefore, all filings made with respect to the requested intervention have been fully reviewed and considered by the Presiding Officers in reaching the conclusions set-forth herein.

- (1) The proposed intervenor's substantial interest in the subject matter of the proceeding.
 - (2) The position of the proposed intervenor with respect to the matters involved in the proceeding.
 - (3) Specific prayers for affirmative relief, if desired.
 - (4) A prayer for leave to intervene and to be made a party to the proceeding.
- (c) A petition to intervene shall be filed not less than five (5) days prior to the date set for the initial public evidentiary hearing on the merits. A petition to intervene may be filed and granted thereafter at the discretion of the presiding officer, upon good cause shown.
 - (d) If a petition to intervene satisfies this section and shows the proposed intervenor has a substantial interest in the subject matter of the proceeding or any part thereof, and the proposed intervenor's participation will not unduly broaden the issues or result in unreasonable delay of the proceeding, the presiding officer may grant the prayer for leave to intervene, in whole or in part and, thereupon, the intervenor becomes a party to the proceeding with respect to the matters set out in the intervention petition.
 - (e) An intervenor is bound by all rulings and other matters of record prior to the time the intervenor is made a party and takes the case as the intervenor finds it as of the date of intervention.
 - (f) Petitions to intervene, when filed with the commission, shall show service thereof upon all parties to the proceeding, in conformity with section 13 of this rule.
 - (g) A party may object to a petition to intervene, and, absent objection thereto, may be deemed to have waived any objection to the granting of the petition. Any response shall be filed within seven (7) days after service of the petition to intervene and shall be served upon all other parties unless the presiding officer prescribes a different time. Any reply to the responses shall be filed within five (5) days after service of the response unless the presiding officer prescribes a different time. Responses or replies may be made orally at the time of hearing or prehearing conference if there exists insufficient time prior to the hearing or conference to make written response or reply according to the deadlines provided under this section.

The Presiding Officers have reviewed the entirety of the filings on this issue and have determined that the Petition to Intervene filed by Invenergy Nelson meets the requirements set forth in 170 IAC 1-1.1-11. In reaching this determination we note that while the Commission issued an

Interim Order in this Cause on July 1, 2005, this matter has not yet progressed to a final Evidentiary Hearing on the merits.² That hearing is currently scheduled for March 13-17, 2006.

In its Interim Order the Commission specifically indicated that:

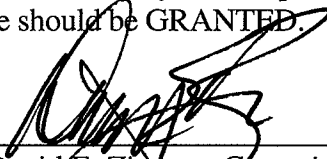
Therefore, we find that on an interim basis and without reaching a conclusion on the remaining issues in this proceeding, which will be subject to later hearings scheduled in this case, that Clean Energy and EnergyUSA should be authorized to sell and NIPSCO should be allowed to purchase such AGC Service under the Power Sales Tariff until December 31, 2005, or until a subsequent order is issued by the Commission following the Evidentiary Hearing in this Cause, whichever comes first. Interim Order at 16.

The Commission went on to indicate that:

The conclusions reached in this order are interim and are therefore subject to a further hearing in this matter at which time all parties shall have the right to present evidence relevant to the Petition, in addition to any testimony and evidence previously presented in this Cause. *Id.*

The Petition to Intervene, filed well in advance of the Evidentiary Hearing, demonstrates that: 1) Invenergy Nelson has a substantial interest in the subject matter of the proceeding; 2) the proposed intervenor's participation will not unduly broaden the issues or result in unreasonable delay of the proceeding; and 3) based on assurances made by Invenergy Nelson, and the current state of the record in this proceeding, that the proposed intervenor's participation will not unduly broaden the issues or result in unreasonable delay of the proceeding. Therefore, we find that Invenergy Nelson's Petition to Intervene should be GRANTED.

IT IS SO ORDERED.



David E. Ziegner, Commissioner



Scott R. Storms, Chief Administrative Law Judge



Date

² In reaching this conclusion the Presiding Officers recognize that 170 IAC 1-1.1-11(c), states that: "[a] petition to intervene shall be filed not less than five (5) days prior to the date set for the initial public evidentiary hearing on the merits. A petition to intervene may be filed and granted thereafter at the discretion of the presiding officer, upon good cause shown." While we find, as discussed in this Docket Entry, that the initial public Evidentiary Hearing in this Cause which culminated in the issuance of an Interim Order, was not a full hearing on the merits as contemplated under this rule, in the event that confusion exists with respect to the application of this rule, we also recognize that it is within our discretion to grant the Petition to Intervene filed by Invenergy Nelson based on "good cause shown" consistent with 170 IAC 1-1.1-11(c).